UNITED STATES PATENT AND TRADEMARK OFFICE

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EXAMINER
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ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 December 2009*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *36-59* is/are pending in the application.

     4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *36-59* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

     a)☐ All   b)☐ Some * c)☐ None of:

       1.☐ Certified copies of the priority documents have been received.

       2.☐ Certified copies of the priority documents have been received in Application No. _____ .

       3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

     * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
     Paper No(s)/Mail Date _____ .

4)☐ Interview Summary (PTO-413)
     Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____ .

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments with respect to claims 36-59 have been considered but are moot in

view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
>
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
>
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
>
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
>
> manner in which the invention was made.

3.   Claims 36-42, 47-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over US

2007/0214083 to Jones et al (hereinafter Jones) in view of US 20030182420 to Jones et al

(hereinafter Jones '420).

       Regarding claim 36, 47, the combination of Jones and Jones '420 teaches a system for

providing data filtering from a cable modem termination system (CMTS) in a cable data network

comprising:

       the CMTS, wherein the CMTS comprises a packet counter, wherein the packet counter

determines a number of packets sent to a subscriber device from the CMTS (herein,

"downstream packets") and a number of packets originating from the subscriber device and sent

to the CMTS (herein, "upstream packets"), and a data gateway agent (Jones, [0072], the services

granted to the subscriber terminal are monitored including counting the number of packets

transmitted or received (i.e., upstream and downstream). See Jones fig. 1-2.);

a datastore accessible to the data gateway agent for storing a data transfer rule selected by

a subscriber (Jones, [0072], the policy decision point stores rules about the data transfer. A

threshold value is used and monitored regarding the subscriber packet transmission. See also,

[0035-0036].), and

wherein the gateway agent comprises instructions that cause the CMTS to: receive a

packet prior to receipt of the packet by the packet counter; access the data transfer rule stored in

the datastore (Jones, [0035-0036], [0072], the subscriber terminal monitors packet count and

based on a threshold of data transfer enacts rules regarding the subscriber.);

Jones does not expressly disclose, but Jones '420 discloses:

wherein the selected data transfer rule comprises filtering criteria selected by the

subscriber (Jones '420, fig. 6-7, [0224-0238].),

using the filtering criteria to determine whether the packet violates the data transfer rule

when the packet is received during the recurring time period (Jones '420, fig. 6-7, [0224-0238].);

and

forward the packet to the packet counter for counting when the packet is not received

during the recurring time period or does not violate the data transfer rule (Jones '420, [0188], fig.

3.);

wherein the data transfer rule comprises a recurring time period during which the filtering

criteria may be applied; determine whether the packet is received during the recurring time

period (Jones '420, fig. 6.);

and apply a corrective measure to the packet when the packet is received during the

recurring time period and violates the data transfer rule (Jones '420, fig. 6-7, [0224-0238].).

It would have been obvious to one of ordinary skill in the art at the time of the invention

to combine the teachings of Jones and Jones '420 in order to apply authorization, usage, and

access policies as well as to be able filter or allow packets based on user preferences (Jones '420,

abstract, [0016].).

Regarding claim 37, 48, the combination of Jones and Jones '420 teaches the system of

claim 36, wherein the filtering criteria comprise packet payload criteria and the instruction to use

the filtering criteria to determine whether the packet violates the data transfer rule when the

packet is received during the recurring time period comprises determining whether the packet

comprises the packet payload criteria when the packet is received during the recurring time

period (Jones '420, fig. 4, [0189-0199].).

Regarding claim 38, 49, the combination of Jones and Jones '420 teaches the system of

claim 37, The combination of Jones and Jones '420 does not expressly disclose wherein the

packet is an upstream packet and the packet payload criteria are selected from the group

consisting of subscriber personal information, a telephone number, a social security number, a

driver's license number, a credit card number, and location information.

However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability. See *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the nonfunctional descriptive material with the claimed invention because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the descriptive material does not patentably distinguish the claimed invention.

Regarding claim 39, 50, the combination of Jones and Jones '420 teaches the system of claim 36, recurring time period is selected from the group consisting of a time segment defined by times of day and a time segment defined by days of a week (Jones '420, fig. 6.).

Regarding claim 40-41, 51-52, the combination of Jones and Jones '420 teaches the system of claim 36, wherein the filtering criteria comprise time criteria and packet protocol criteria (Jones '420, fig. 4, [0189-0199].) and wherein the instruction to use the filtering criteria to determine whether the packet violates the data transfer rule when the packet is received during the recurring time period comprises determining whether the packet is a packet of a particular type that is received at the CMTS during the recurring time period uses a particular protocol when the packet is received during the recurring time period (Jones '420, fig. 9.).

Regarding claim 42, 53, the combination of Jones and Jones '420 teaches the system of

claim 36, wherein the gateway agent further comprises instructions that cause the CMTS to:

receive an upstream packet (Jones '420, fig. 1.);

create an entry in a connection database, wherein the entry in the connection database

comprises an upstream packet identifier that identifies the upstream packet as originating from

the subscriber device (Jones '420, fig. 6-7, [0224-0238], See also [0188-0199].); and

receive a downstream packet, wherein the filtering criteria comprises the upstream packet

identifier, and wherein the instruction to use the filtering criteria to determine whether the packet

violates the data transfer rule when the packet is received during the recurring time period

comprises determining whether the downstream packet comprises the upstream packet identifier

when the packet is received during the recurring time period (Jones '420, fig. 3, fig. 6-7, [0224-

0238].).

4.   Claims 43-46, 54-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Jones in view of Jones '420, and further in view of US 2004/0111519 to Fu et al (hereinafter Fu).

Regarding claim 43-46, 54-57, the combination of Jones and Jones '420 teaches the

system of claim 36 but does not expressly disclose wherein the CMTS further comprises a billing

agent and wherein the billing agent is configured to receive a subscriber count trigger and to

transmit a count message to the subscriber comprising a current packet count upon the receipt of

the subscriber count trigger.

However, Fu discloses wherein the CMTS further comprises a billing agent and wherein the billing agent is configured to receive a subscriber count trigger and to transmit a count message to the subscriber comprising a current packet count upon the receipt of the subscriber count trigger (Fu, [0049-0052], server is updated regarding network resources (i.e. packets) utilized by the terminal for accounting an billing purposes.).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Jones, Jones '420, and Fu in order filter packets to a user terminal based on user preferences as well as to count packets to determine network resources utilized by the terminal (Fu, [0025-0029], [0050-0053].).

Regarding claims 58-59, the combination of Jones, Jones '420, and Fu teaches the method of claim 47 further comprising:

send the subscriber device a notification message when the packet violates the data transfer rule (Fu, [0026-0028].)

wherein the notification message comprises a request for selection of an option from the group consisting of an option to allow the packet to be sent or received and an option to not allow the packet to be sent or received (Fu, [0026-0028], terminals are sent a notification message when a packet meets the filtering criteria. Terminals choose to allow or block the packet.);

receive a response from the subscriber device comprising the selected option (Fu, [0026-0028], denied packets.);

discard the packet when the selected option is to not allow the packet to be sent or

received (Fu, [0026-0028], [0050-0055].); and

forward the packet to the packet counter for counting when the selected option is to allow

the packet to be sent or received (Fu, [0026-0028], [0050-0055], packets are counted according

to network resources consumed by the terminal.).

Conclusion

5.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to RYAN J. JAKOVAC whose telephone number is (571)270-5003.

The examiner can normally be reached on Monday through Friday, 7:30 am to 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Vivek Srivastava can be reached on 571-272-7304. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ryan Jakovac/

/VIVEK SRIVASTAVA/

Supervisory Patent Examiner, Art Unit 2445